



Reprinted
February 14, 2001

SENATE BILL No. 312

DIGEST OF SB 312 (Updated February 13, 2001 3:28 PM - DI 98)

Citations Affected: IC 16-18; IC 16-41.

Synopsis: HIV testing of pregnant women. Requires that a pregnant woman be tested for the antibody or antigen to the human immunodeficiency virus (HIV) during pregnancy. Requires that a blood sample for an HIV test be taken from a woman at the time of delivery if there is no written evidence that the woman was tested for HIV during her pregnancy. Provides that the pregnant woman may refuse to consent to the test. Requires that a pregnant woman's refusal to consent to the test be documented in the pregnant woman's medical records. Requires that information pertaining to the woman's HIV testing status be included on a birth certificate or stillbirth certificate. Requires that a pregnant woman be told of all available treatment options if the pregnant woman has a positive HIV test. Requires the individual who orders an HIV test to tell the pregnant woman that the purpose of the test is to protect the health of her unborn child. Requires the results of the tests to be confidential. Repeals a portion of a current law pertaining to voluntary HIV testing for pregnant women. Requires the state department of health to develop and distribute written materials explaining treatment options for individuals who have a positive HIV test.

Effective: July 1, 2001.

Miller, Breaux, Antich, Smith S

January 16, 2001, read first time and referred to Committee on Health and Provider Services.
February 1, 2001, amended, reported favorably — Do Pass.
February 13, 2001, read second time, amended, ordered engrossed.

SB 312—LS 6504/DI 98+



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 312

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-337.8 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2001]: **Sec. 337.8. "Standard serological test**
4 **for HIV", for purposes of IC 16-41-6, has the meaning set forth in**
5 **IC 16-41-6-0.5.**

6 SECTION 2. IC 16-41-6-0.5 IS ADDED TO THE INDIANA CODE
7 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
8 1, 2001]: **Sec. 0.5. As used in this chapter, "standard serological test**
9 **for HIV" means a test recognized by the state department as a**
10 **standard serological test for the antibody or antigen to the human**
11 **immunodeficiency virus (HIV).**

12 SECTION 3. IC 16-41-6-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Except as
14 provided in subsection (b), a person may not perform a screening or
15 confirmatory test for the antibody or antigen to the human
16 immunodeficiency virus (HIV) without the consent of the individual to
17 be tested or a representative as authorized under IC 16-36-1. A

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physician ordering the test or the physician's authorized representative shall document whether or not the individual has consented.

(b) The test for the antibody or antigen to HIV may be performed if one (1) of the following conditions exists:

(1) If ordered by a physician who has obtained a health care consent under IC 16-36-1 or an implied consent under emergency circumstances and the test is medically necessary to diagnose or treat the patient's condition.

(2) Under a court order based on clear and convincing evidence of a serious and present health threat to others posed by an individual. A hearing held under this subsection shall be held in camera at the request of the individual.

(3) If the test is done on blood collected or tested anonymously as part of an epidemiologic survey under IC 16-41-2-3 or IC 16-41-17-10(a)(5).

(4) The test is ordered under section 4, **5, 6, or 7** of this chapter.

(c) A court may order a person to undergo testing for HIV under IC 35-38-1-10.5(a) or IC 35-38-2-2.3(a)(16).

SECTION 4. IC 16-41-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.5. (a) As used in this section, "prenatal care provider" means:

(1) a physician licensed under IC 25-22.5;

(2) a registered nurse licensed under IC 25-23;

(3) a licensed practical nurse licensed under IC 25-23; or

(4) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to the pregnant patient. The information and counseling must include the following:

(1) A description of the methods of HIV transmission.

(2) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal transmission.

(3) Referral information to other HIV prevention and psychosocial services, if appropriate, including anonymous and confidential test sites approved by the state department.

~~(c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer an HIV test to the patient unless:~~

~~(1) a positive HIV test result is already documented in the patient's medical record; or~~

~~(2) the patient has acquired immune deficiency syndrome (AIDS);~~



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as diagnosed by a physician.

(d) In offering an HIV test under subsection (c), the prenatal care provider shall discuss the following with the pregnant patient:

(1) The purpose of the test.

(2) The risks and benefits of the test.

(3) The voluntary nature of the test.

(e) If the pregnant patient voluntarily consents to HIV testing, the prenatal care provider shall arrange for HIV testing directly or by referral, including referral to anonymous and confidential test sites approved by the state department.

(f) (c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall document in the patient's medical record that the prenatal care provider offered the following to the patient:

(1) HIV information and counseling to the patient.

(2) An HIV test.

(g) This section shall not be construed to require any of the following:

(1) HIV testing.

(2) The documentation or disclosure of whether the patient had an HIV test.

(3) The result of an HIV test, except to the patient.

SECTION 5. IC 16-41-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Subject to subsection (e), (f), if:

(1) the mother of a newborn infant has not had a test performed under IC 16-41-6-2.5 **section 5, 6, or 7 of this chapter;**

(2) the mother of a newborn infant has refused a test for the newborn infant to detect the human immunodeficiency virus HIV or the antibody or antigen to HIV; and

(3) a physician believes that testing the newborn infant is medically necessary;

the physician **overseeing the care of the newborn infant** may order a confidential test for the newborn infant in order to detect ~~the human immunodeficiency virus~~ HIV or the antibody or antigen to HIV. The test must be ordered at the earliest feasible time not exceeding forty-eight (48) hours after the birth of the infant.

(b) If the physician orders a test under subsection (a), the physician must:

(1) notify the mother of the newborn infant of the test; and

(2) provide ~~human immunodeficiency virus~~ HIV information and counseling to the mother. The information and counseling must



include the following:

- (A) The purpose of the test.
- (B) The risks and benefits of the test.
- (C) A description of the methods of HIV transmission.
- (D) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal HIV transmission and HIV transmission through breast milk.
- (E) Referral information to other HIV prevention, health care, and psychosocial services.

(c) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(d) The results of the confidential test ordered under subsection (a) must be released to the mother of the newborn infant.

(e) If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the mother of the newborn infant of all treatment options available to the newborn infant.

(f) If ~~the~~ a parent of the newborn infant objects in writing for reasons pertaining to religious beliefs, the newborn infant is exempt from the test under subsection (a).

(g) The state department shall adopt rules under IC 4-22-2 to carry out this section.

(h) The results of a test performed under this section are confidential.

SECTION 6. IC 16-41-6-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 5. (a) Subject to subsection (c), a physician who diagnoses a pregnancy of a woman shall take or cause to be taken a sample of the pregnant woman's blood at the time of diagnosis of pregnancy and shall submit the sample to an approved laboratory for a standard serological test for HIV.**

(b) A physician who orders a test under subsection (a) shall explain to the pregnant woman that the purpose of the test is to protect the health of her unborn child.

(c) The pregnant woman must be informed that she may refuse to consent to the test. The pregnant woman's refusal to consent to the test must be noted in the pregnant woman's medical records.

(d) If a test ordered under subsection (a) is positive, the physician who ordered the test shall inform the pregnant woman of all treatment options available to her.

(e) The confidentiality provisions of IC 16-41-2-3 apply to this section.



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1 (f) The results of a test performed under this section are
2 confidential.

3 SECTION 7. IC 16-41-6-6 IS ADDED TO THE INDIANA CODE
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
5 1, 2001]: Sec. 6. (a) Subject to subsection (c), an individual other
6 than a physician who is permitted by law to attend a pregnant
7 woman, but who is not permitted by law to take blood specimens,
8 shall cause a sample of the pregnant woman's blood to be taken by
9 or under the direction of a licensed physician, who shall submit the
10 sample to an approved laboratory for a standard serological test
11 for HIV.

12 (b) The individual who attends the pregnant woman under
13 subsection (a) shall explain to the pregnant woman that the
14 purpose of the test is to protect the health of her unborn child.

15 (c) The pregnant woman must be informed that she may refuse
16 to consent to the test. The pregnant woman's refusal to consent to
17 the test must be noted in the pregnant woman's medical records.

18 (d) If a test ordered under subsection (a) is positive, the
19 individual who attends the pregnant woman shall inform the
20 pregnant woman of all treatment options available to her.

21 (e) The confidentiality provisions of IC 16-41-2-3 apply to this
22 section.

23 (f) The results of a test performed under this section are
24 confidential.

25 SECTION 8. IC 16-41-6-7 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2001]: Sec. 7. (a) Subject to subsection (c), if, at the time of
28 delivery, there is no written evidence that a standard serological
29 test for HIV has been made in accordance with section 5 or 6 of
30 this chapter, the individual in attendance at the delivery shall take
31 or cause to be taken a sample of the blood of the woman at the time
32 of the delivery and shall submit the sample to an approved
33 laboratory for a standard serological test for HIV.

34 (b) The individual in attendance at the delivery shall explain to
35 the woman that the purpose of the test is to protect against
36 transmission of the disease to her child.

37 (c) The woman must be informed that she may refuse to consent
38 to the test. The woman's refusal to consent to the test must be
39 noted in the woman's medical records.

40 (d) If a test ordered under subsection (a) is positive, the
41 individual in attendance at the delivery shall inform the woman of
42 all treatment options available to her.



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1 (e) The confidentiality provisions of IC 16-41-2-3 apply to this
2 section.

3 (f) The results of a test performed under this section are
4 confidential.

5 SECTION 9. IC 16-41-6-8 IS ADDED TO THE INDIANA CODE
6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2001]: Sec. 8. (a) The state department shall require, on each
8 birth certificate and stillbirth certificate, in addition to the
9 information otherwise required to be included on the certificate,
10 the following information:

11 (1) Whether a serological test for HIV was performed for the
12 woman who bore the child.

13 (2) If a serological test for HIV was performed, the date the
14 blood specimen was taken.

15 (3) If a serological test for HIV was performed, whether the
16 test was performed during pregnancy or at the time of
17 delivery.

18 (4) If a serological test for HIV was not performed, the reason
19 why the test was not performed.

20 (b) An individual who prepares a birth certificate or a stillbirth
21 certificate shall include the information required in subsection (a).

22 SECTION 10. IC 16-41-6-9 IS ADDED TO THE INDIANA CODE
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2001]: Sec. 9. (a) The state department shall:

25 (1) prepare written materials that are based on the most
26 current information available from the federal Centers for
27 Disease Control (CDC) and that explain the treatment options
28 available to an individual who has a positive test for HIV; and
29 (2) distribute the materials prepared under subdivision (1) to
30 physicians and other individuals who are allowed by law to
31 attend a pregnant woman.

32 (b) The state department shall update and distribute the
33 materials described in subsection (a) at least one (1) time every two
34 (2) years.

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SENATE MOTION

Mr. President: I move that Senator Breaux be added as second author and Senator Antich be added as coauthor of Senate Bill 312.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 312, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 5-10-8-10, AS ADDED BY P.L.91-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) The state shall cover the **testing required under IC 16-41-6-4 and the** examinations required under IC 16-41-17-2 under a:

- (1) self-insurance program established or maintained under section 7(b) of this chapter to provide group health coverage; and
- (2) contract entered into or renewed under section 7(c) of this chapter to provide health services through a prepaid health care delivery plan.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test.

SECTION 2. IC 12-15-15-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 4.5. Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test."**

Page 2, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 6. IC 16-41-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2.5. (a) As used in this section, "prenatal care provider" means:

- (1) a physician licensed under IC 25-22.5;
- (2) a registered nurse licensed under IC 25-23;
- (3) a licensed practical nurse licensed under IC 25-23; or
- (4) an advanced practice nurse licensed under IC 25-23;

who provides prenatal care within the scope of the provider's license.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to the pregnant patient. The information and counseling must include the following:

- (1) A description of the methods of HIV transmission.
- (2) A discussion of risk reduction behavior modifications, including methods to reduce the risk of perinatal transmission.

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(3) Referral information to other HIV prevention and psychosocial services, if appropriate, including anonymous and confidential test sites approved by the state department.

(c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer an HIV test to the patient unless:

- (1) a positive HIV test result is already documented in the patient's medical record; or
- (2) the patient has acquired immune deficiency syndrome (AIDS), as diagnosed by a physician.

(d) In offering an HIV test under subsection (c), the prenatal care provider shall discuss the following with the pregnant patient:

- (1) The purpose of the test.
- (2) The risks and benefits of the test.
- (3) The voluntary nature of the test.

(e) If the pregnant patient voluntarily consents to HIV testing, the prenatal care provider shall arrange for HIV testing directly or by referral, including referral to anonymous and confidential test sites approved by the state department.

(f) (c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall document in the patient's medical record that the prenatal care provider offered the following to the patient:

- (1) HIV information and counseling to the patient.
- (2) An HIV test.

(g) This section shall not be construed to require any of the following:

- (1) HIV testing.
- (2) The documentation or disclosure of whether the patient had an HIV test.
- (3) The result of an HIV test, except to the patient."

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"(h) The results of a test performed under this section are confidential."

Page 3, between lines 34 and 35, begin a new paragraph and insert:

"(e) The confidentiality provisions of IC 16-41-2-3 apply to this section."

(f) The results of a test performed under this section are confidential."

Page 4, between lines 10 and 11, begin a new paragraph and insert:

"(e) The confidentiality provisions of IC 16-41-2-3 apply to this section."



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(f) The results of a test performed under this section are confidential."

Page 4, between lines 28 and 29, begin a new paragraph and insert:

"(e) The confidentiality provisions of IC 16-41-2-3 apply to this section.

(f) The results of a test performed under this section are confidential."

Page 5, line 7, after "that" insert **"are based on the most current information available from the federal Centers for Disease Control (CDC) and that"**.

Page 5, delete lines 16 and 17, begin a new paragraph and insert:

"SECTION 13. IC 27-8-24-4, AS AMENDED BY P.L.91-1999, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. **(a)** Except as provided in section 5 of this chapter, every policy or group contract that provides maternity benefits must provide minimum benefits to a mother and her newborn child that cover:

(1) a minimum length of postpartum stay at a hospital licensed under IC 16-21 that is consistent with the minimum postpartum hospital stay recommended by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists in their Guidelines for Perinatal Care; ~~and~~

(2) the examinations to the newborn child required under IC 16-41-17-2; **and**

(3) the testing of the newborn child required under IC 16-41-6-4.

(b) Payment to a hospital for a test required under IC 16-41-6-4 must be in an amount equal to the hospital's actual cost of performing the test."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 312 as introduced.)

MILLER, Chairperson

Committee Vote: Yeas 7, Nays 3.



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SENATE MOTION

Mr. President: I move that Senator Smith S be added as coauthor of Senate Bill 312.

MILLER

SENATE MOTION

Mr. President: I move that Senate Bill 312 be amended to read as follows:

Page 1, delete lines 1 through 17.

Page 2, delete line 1.

Page 4, line 1, after "if" insert ":".

Page 4, line 2, reset in roman "(1)".

Page 4, line 3, delete ";" and insert "**section 5, 6, or 7 of this chapter;**".

Page 4, reset in roman lines 4 through 7.

Page 4, line 8, reset in roman "medically necessary;".

Page 4, line 8, delete "section 5, 6, or 7 of this chapter,".

Page 4, line 9, after "physician" insert "**overseeing the care of the newborn infant**".

Page 4, line 9, reset in roman "may".

Page 4, line 9, after "may" delete "overseeing the care of the newborn infant shall".

Page 7, delete lines 11 through 28.

Re-number all SECTIONS consecutively.

(Reference is to SB 312 as printed February 2, 2001.)

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